

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PIE 22-03 Elections
SPONSOR(S): Public Integrity & Elections Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Elections Committee	12 Y, 6 N	Roy	Rubottom

SUMMARY ANALYSIS

PCB PIE 22-03 adds new election security provisions, reforms voter registration list maintenance activities, and, beginning in 2024, requires a voter to include an identification number to validate vote by mail ballots.

The elections security provisions:

- Create a new election security office in the Department of State (Department), requiring reports;
- Limit governor appointed special officers to FDLE officers, with at least one per operational district;
- Clarify that special officers are not permitted in polling locations without consent of election officials;
- Impose criminal penalties on persons with access to certain information during election canvassing who release votes cast or other election results early;
- Reclassify three election related misdemeanors to felonies; and
- Increase the aggregate fine that may be levied in a year against third-party voter registration organizations (3PVRO) for violations relating to mishandling registration applications.

The registration list maintenance reforms:

- Require greater effort, annually, to confirm residential addresses of all voters;
- Increase the information officials may access in order to confirm voter eligibility; and
- Promote collection of identification numbers for all registered voters.

The revised vote by mail (VBM) ballot procedures:

- Add a voter certificate envelope separate from the mailing envelope;
- Require an identification number on the certificate in addition to the voter's signature;
- Clarify instructions to mail voters; and
- Revise canvassing procedures to validate both identification numbers and signatures for a ballot to be valid and counted.

PCB PIE 22-03 also:

- Extends a nonprofit organization donation prohibition to include litigation costs of election offices.
- Requires the Supervisor to keep all valid and invalid initiative petition signature forms for 1 year, catalog and publish regular counts, and provide a method of copying and reviewing the forms.
- Creates a new law to prohibit ranked-choice voting.
- Requires a subset of county commissioners elected in single member districts to run for re-election following decennial redistricting.

The bill has a significant fiscal impact on the Department, FDLE and Supervisors.

The bill, except as otherwise expressly provided, takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Elections Security

Officers Enforcing Election Laws

Present Situation

Sheriffs must exercise strict vigilance in the detection of any violations of the election laws and in the apprehending of violators. The Governor may appoint special officers to investigate alleged violations of the election laws, when it is deemed necessary to see that violators of the election laws are apprehended and punished.¹ This later provision is in keeping with the Governor's constitutional responsibility to see that the laws are faithfully executed.²

The Election Commission must consider all sworn complaints filed with it and all matters reported to it by the Division.³ The Elections Commission's investigative jurisdiction extends to the campaign finance laws and violation of most Florida Election Code crimes.⁴

Notwithstanding their law enforcement responsibilities, no sheriff, deputy sheriff, police officer, or other officer of the law is allowed within the polling place without permission from the clerk or a majority of the inspectors, except to cast his or her own ballot. Upon the failure of any of said officers to comply with this provision, the clerk or the inspectors or any one of them may have the officer arrested.⁵

The Florida Department of Law Enforcement (FDLE) is a department headed by the Governor and cabinet. The executive director, appointed by the Governor with approval of all three cabinet members serves at the pleasure of the Governor and Cabinet, and may establish command, operational, and administrative services to assist, manage, and support operating programs and services such as Criminal investigations, information programs, and professional programs.⁶ The Governor has no direct authority over FDLE or its special officers.

The Department of State administers the elections laws through rulemaking and oversight. It has authority to ensure enforcement of the laws and implementing rules. The Secretary of State is the chief elections officer in the state with responsibility to conduct preliminary investigations into allegations of irregularities or fraud involving voter registration or voting, or candidate or issue petition activities other than campaign finance violations.⁷ In 2021, the Secretary testified to the Public Integrity & Elections Committee that tips on election fraud or irregularities are ordinarily referred to the local Supervisor.⁸ The Department has an Election Fraud Hotline with an associated website advising that it is a felony to knowingly and willfully make false statements in any matter within the jurisdiction of the Department.⁹

¹ S. 102.091(1), 102.091(2), F.S.

² S. 1, Art. IV, Fl. Const.

³ S. 106.26(1), F.S.

⁴ S. 106.25(1), F.S. (Jurisdiction includes violations of ch. 106, F.S. and ch. 104, F.S.)

⁵ S. 102.101, F.S.

⁶ S. 20.201, F.S.

⁷ S. 97.012(15), F.S.

⁸ House video archive of Feb. 9, 2021, committee meeting, found at <https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=6711> (last visited Feb. 3, 2022).

⁹ <https://dos.myflorida.com/elections/contacts/elections-fraud-complaint/> (last visited Feb. 3, 2022).

Effects of Proposed Changes

PCB PIE 22-03 creates an Office of Election Crimes and Security in the Department of state, having non-sworn officers, and authorized to investigate reports, notices, referrals, complaints, irregularities¹⁰ or to investigate on its own initiative, with respect to violations of the Florida Election Code or any rule adopted pursuant to that code. A director is to be appointed by the Secretary of State and the office is to oversee the Department's Election Fraud Hotline. The office is required to report by January 15 each year on complaints it received, detailing its investigations and providing the number of complaints forwarded to special officers appointed by the Governor. The report must include the current status of all matters investigated.

The bill further directs the Governor to consult with the executive director of the FDLE prior to the appointment of special officers to investigate alleged violations of election laws. The bill limits the Governor's discretion to the appointment of FDLE officers. The bill adds a description of the swearing in of the special officer, and requires at least one special officer to be designated in each operational region of FDLE to serve as a dedicated investigator. The appointment of a special officer does not preclude a sworn investigator from conducting other investigations of the alleged violations of law, provide that such other investigations do not hinder or interfere with the election law investigation.

The jurisdiction of the investigators provided by the bill extends to all violations of the Florida Election Code which includes campaign finance crimes.

The bill also clarifies that the special officers appointed by the Governor are included among the law enforcement officers who have restricted access to polling places.

Ballot Duplication Observers; Private Inspection and Review of Ballot Materials *Present Situation*

A ballot duplication must be made if a VBM ballot is damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, or of a VBM ballot containing an overvoted or undervoted race if there is a clear indication on the ballot that the voter has made a definite choice on the ballot. A duplicate must be made in an open and accessible room in the presence of witnesses and substituted for the damaged ballot. A duplicate may not include a vote if the voter's intent in such race or on such measure is not clear. Certain interested parties must be allowed to observe the duplication of ballots.¹¹

In addition, certain interested parties are authorized to inspect and review ballot materials including duplicate ballots during the voting period.¹²

Any election official who releases the results of any election prior to the closing of the polls in that county on election day commits a felony of the third degree.¹³ No similar penalty applies to unofficial observers of the duplication process or those inspecting or reviewing of ballot materials.

Effects of Proposed Changes

The bill requires those authorized to observe the duplication of ballots to sign an affidavit affirming his or her acknowledgement that disclosure of election results discerned from the observation process while the election is ongoing is a felony. The bill adds those observers, as well as non-officials authorized to review and inspect ballot materials to the list of persons subject to criminal sanction for early release of voting results.

¹⁰ Black's Law Dictionary (11th ed. 2019). Irregularity in the context of the bill consists of omitting to do something that is necessary for the due and orderly conduct of a matter, or doing it in an improper manner. It would include violations of Department rules and other non-criminal official misfeasance and neglect of duty.

¹¹ S. 101.5614(4)(a), F.S.

¹² S. 101.572(2), F.S.

¹³ S. 101.5614(8), F.S.

Ballot Harvesting; Initiative Petition Violations

Present Situation

Presently, it is a misdemeanor of the first degree for any person to distributes, orders, requests, collects, delivers, or otherwise physically possesses more than two VBM ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member. Exceptions include supervised voting at assisted living facilities and nursing home facilities.¹⁴ “Immediate family” in the statute’s context means a person’s spouse or the parent, child, grandparent, grandchild, or sibling of the person or the person’s spouse.¹⁵

Two forms of petition fraud are presently misdemeanors of the first degree: knowingly signing a petition or petitions for a candidate, a minor political party, or an issue more than one time, and signing another person’s name or a fictitious name to any petition to secure ballot position for a candidate, a minor political party, or an issue.¹⁶

It is also a misdemeanor of the first degree to compensate a petition circulator based on the number of petition forms gathered. Employment relationships that do not base payment on the number of signatures collected are not prohibited.¹⁷

Effects of Proposed Changes

PCB PIE 22-03 makes the act of distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two vote-by-mail ballots per election a felony of the third degree. The bill provides that such violation is to be punished as a level one violation on the offense severity ranking chart.¹⁸

PCB PIE 22-03 also raises to felonies of the third degree:

- The act of knowingly signing more than one ballot or signing another person’s name on a ballot,
- The act of signing another’s or a fictitious name, and
- The act of compensating a petition circulator, other than employment relationships that do not base payment on the number of signatures collected.

Registration Violations of Third-Party Voter Registration Organizations

Present situation

Third-party voter registration organizations (3PVROs) that collect voter registration applications are regulated by law. Such organization serves as a fiduciary to the applicant. They must ensure that any voter registration application entrusted to the organization, irrespective of party affiliation, race, ethnicity, or gender, is promptly delivered to the Division of Elections (Division) or the Supervisor in the county in which the applicant resides within 14 days after the application was completed by the applicant, but not after registration closes for the next ensuing election.¹⁹

3PVROs must notify applicants at the time the application is collected that the organization might not deliver the application to the division or the Supervisor in the county in which the applicant resides in less than the specified time and must advise the applicant that he or she may deliver the application in person or by mail. The 3PVRO must also inform the applicant of how to register online with the Division and how to determine whether the application has been delivered. If a voter registration application collected by any 3PVRO is not promptly delivered to the Division or Supervisor in the county in which the applicant resides, the 3PVRO is subject to monetary fine.²⁰

¹⁴ S. 104.0616, F.S.

¹⁵ S. 104.0616(2), F.S.

¹⁶ S. 104.185, F.S.

¹⁷ S. 104.186, F.S.

¹⁸ S. 921.0022(3), F.S.

¹⁹ S. 97.0575(3)(a), F.S.

²⁰ *Id.*

The fines that may be levied against the 3Pvro are the following:

- A fine in the amount of \$50 for each application received by the division or the Supervisor in the county in which the applicant resides more than 14 days after the applicant delivered the completed voter registration application to 3Pvro or any person, entity, or agent acting on its behalf. A fine in the amount of \$250 for each application received if the 3Pvro or person, entity, or agency acting on its behalf acted willfully.
- A fine in the amount of \$100 for each application collected by a 3Pvro or any person, entity, or agent acting on its behalf, before book closing for any given election for federal or state office and received by the division or the Supervisor in the county in which the applicant resides after the book-closing deadline for such election. A fine in the amount of \$500 for each application received if the 3Pvro or person, entity, or agency acting on its behalf acted willfully.
- A fine in the amount of \$500 for each application collected by a 3Pvro or any person, entity, or agent acting on its behalf, which is not submitted to the division or Supervisor in the county in which the applicant resides. A fine in the amount of \$1,000 for any application not submitted if the 3Pvro or person, entity, or agency acting on its behalf acted willfully.

The aggregate of all fines which may be assessed against the 3Pvro, including affiliated organizations, for all violations committed in a calendar year is limited to \$1,000.²¹

Effects of Proposed Changes

PCB PIE 22-03 raises the aggregate fine for all violations that may be assessed against a 3Pvro and affiliated organization in a calendar year from \$1,000 to \$50,000. The bill leaves the penalty for each offense unchanged. To reach the cap, an organization would have to be responsible, for example, for filing 200 applications too late for the applicants to vote in an election.

Voter Registration List Maintenance

Present Situation

Supervisors, the Department and other public agencies have responsibilities relating to the maintenance of the integrity and accuracy of all voter registration information in statewide voter registration system.²² Each Supervisor must conduct a general registration list maintenance program to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records in the statewide voter registration system. Voter list maintenance responsibilities are assigned by law to the various agencies and officers. All list maintenance activities must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002. The term “nondiscriminatory” applies to and includes persons with disabilities.²³

In 2020 more than 80,000 VBM ballots were returned as undeliverable by the post office.²⁴ Over 1.1 million VBM ballots were provided but never returned by voters. That represented more than 20 percent of all VBM ballots provided.²⁵ Given the unusually high voter turnout in 2020, a 20% non-use of requested VBM ballots is an indication that many of those ballots did not reach the requesting voter. A significant number of those 1 million unreturned ballots were likely accepted at addresses no longer inhabited by the voter addressed. Some number of those ballots were returned illegally by persons other than the requesting voter. Thus, current voter addresses are critical to many voters’ access to their ballots. As well, current legal residence addresses are critical to limiting votes cast in legislative and local districts by residents not entitled to vote in those elections.

²¹ *Id.* at (3)(a)1, (3)(a)2, and (3)(a)3.

²² The statewide voter registration system is established in s. 98.035, F.S.

²³ S. 98.065(1), 98.075(1), F. S.

²⁴ Supervisor Survey Responses available at the Public Integrity & Elections Committee Office.

²⁵ Division of Elections archived vote-by-mail statistics found at <https://fdoswebumbracoprod.blob.core.windows.net/media/703948/gen-2020.pdf> (last visited Feb. 3, 2022).

The registration list maintenance program must be conducted by each Supervisor, at least each odd-numbered year and must be completed no later than 90 days prior to the date of any federal election. All list maintenance actions associated with each voter must be entered, tracked, and maintained in the statewide voter registration system.²⁶

The program must include one of the following methods of identifying residency changes of voters:

- National change-of-address information supplied by the United States Postal Service through its licensees and used to identify registered voters whose addresses might have changed (NCOA verification);
- Address change information is identified from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county; or
- Address change is identified from returned nonforwardable return-if-undeliverable address confirmation requests mailed to all registered voters who have not voted in the last 2 years and who did not make a written request that their registration records be updated during that time (Address Confirmation Request).²⁷

In addition to the required biennial program, Supervisors must also act on information received from sources indicating that any voter's legal residency might have changed. If the Supervisor receives information indicating that a registered voter's legal residence has changed within the state, the Supervisor must change the registration records to reflect the new address and must send the voter an address change notice. If the changed address of the voter is out of the state, then an address confirmation final notice to the voter must be sent. Voters who have been sent address confirmation final notice and who have not returned it within 30 days are designated inactive by the Supervisor. Inactive voter status may be restored upon the voter updating his or her registration, or by voting by the second general election after being placed on the inactive list. If the voter has not restored their registration before then, he or she must be removed from the voter registration system. The voter may then restore their registration status only by reregistration.²⁸

Finally, by July 31 and January 31 of each year, the Supervisor must certify to the Department the list maintenance activities conducted during the first 6 months and the second 6 months of the year, respectively, including the number of voters designated as inactive, and the number of voters removed from the statewide voter registration system. If the Department determines that a Supervisor has not conducted the list maintenance activities required by this section, the Department must conduct the appropriate list maintenance activities for that county. Failure to conduct list maintenance activities constitutes a neglect of duty.²⁹

The Department must prescribe three registration list maintenance forms to be used by the supervisors which include an address confirmation request that must contain: the voter's name and address of legal residence as shown on the voter registration record; and a request that the voter notify the Supervisor if either the voter's name or address of legal residence is incorrect. An address change notice is sent to newly corrected voter addresses seeking confirmation or correction of an address change based on information from sources other than the voter. An address confirmation final notice is sent to voters believed to have moved out of state and are subject to classification as inactive and subsequent removal from the registration list.³⁰

The Department supports the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records. The Department's responsibilities include identification of duplicate voter registrations, deceased persons, adjudication of mental incapacity, felony convictions, and other bases of ineligibility.³¹

²⁶ S. 98.065, F.S.

²⁷ S. 98.065(2), F.S.

²⁸ S. 98.065(4), F.S.

²⁹ S. 98.065(6), F.S.

³⁰ S. 98.0655(1)

³¹ S. 98.075(1), F.S.

The Department is a member the Election Registration Information Center, a non-governmental entity whose sole purpose is to exchange and verify information in order to verify voter information. As of 2020, 29 states and the District of Columbia participated. The participation supplements the Department's information gathering responsibilities within Florida.³²

The Department identifies those registered voters who are deceased by comparing information received from either the Department of Health, or the United States Social Security Administration, including, but not limited to, any master death file or index compiled by the United States Social Security Administration. Upon receipt of such information through the statewide voter registration system, or upon receipt of a copy of a death certificate issued by a governmental agency authorized to issue death certificates, the Supervisor is required to remove the name of a deceased registered voter from the statewide voter registration system within 7 days.³³

The Department also identifies registered voters who have been convicted of a felony whose voting rights have not been restored by comparing information from a clerk of the circuit court, the Board of Executive Clemency, the Department of Corrections, the Department of Law Enforcement, or a United States Attorney's Office. The Department must make the initial determination as to the credibility of the information. If the information is credible, the Department must notify the Supervisor, providing supporting documentation of the potential ineligibility of the voter. The Supervisor, upon assessing credibility, must adhere to the procedures for removal prior to removal of a registered voter's name from the statewide voter registration system.³⁴

State law requires the Department of Health and certain public safety agencies to furnish information to elections offices relating to deceased persons, persons adjudicated mentally incapacitated, and persons convicted of a felony. To the maximum extent feasible, state and local government agencies must provide certain information and access to data to the Department, including, but not limited to, databases that contain reliable criminal records and records of deceased persons. State and local government agencies that provide such data must do so without charge if the direct cost incurred by those agencies is not significant.³⁵

The Department of Health furnishes monthly to the department a list containing the name, address, date of birth, date of death, social security number, race, and sex of each deceased person 17 years of age or older. Each clerk of the circuit court furnishes monthly a list of those persons who have been adjudicated mentally incapacitated with respect to voting during the preceding calendar month, a list of those persons whose mental capacity with respect to voting has been restored during the preceding calendar month, and a list of those persons who have returned signed jury notices during the preceding months to the clerk of the circuit court indicating a change of address. Each list must include the name, address, date of birth, race, sex, and, if available, the Florida driver license number, Florida identification card number, or social security number of each such person.³⁶

Upon receipt of felony conviction information from United States Attorney, the Department is required to identify registered voters or applicants for voter registration who may be potentially ineligible. The Department of Law Enforcement must timely identify persons who have been convicted of a felony who appear in the voter registration records supplied by the statewide voter registration system. The Florida Commission on Offender Review must furnish specified clemency information on individuals on at least a bimonthly basis. The Department of Corrections must timely identify those persons who have been convicted of a felony and committed to its custody or placed on community supervision.³⁷

In addition to clemency proceedings, Florida law provides for the restoration of voting rights of most convicted felons once they have completed the terms of their sentence.³⁸

³² Election Registration Information Center, *Statistics*, <https://ericstates.org/statistics/>.

³³ S. 98.075(3), F.S.

³⁴ S. 98.075(5), F.S.

³⁵ S. 98.093(1), 98.093(2), F.S.

³⁶ S. 98.093(2), F.S.

³⁷ *Id.*

³⁸ S. 98.0751, F.S. implementing s. 4(a) and (b), art. IV, Fl. Const.

The Department of Highway Safety and Motor Vehicles (DHSMV) must furnish a monthly list to the department of those persons whose names have been removed from the driver license database because they have been licensed in another state. The list must contain the name, address, date of birth, sex, social security number, and driver license number of each such person.³⁹

Supervisors are not limited or restricted from removing other names of persons from the statewide voter registrations system based on information received from sources not specified in statute.⁴⁰

The DHSMV must provide the opportunity to register to vote or to update a voter registration record to each individual who comes to an office of that department to: apply for or renew a driver license; apply for or renew an identification card; or change an address on an existing driver license or identification card.⁴¹

The DHSMV must also assist the Department of State (Department) in regularly identifying changes in residence address on the driver license, or identification card of a voter. The Department must report each such change to the appropriate supervisor of elections who must in turn change the voter's registration records.⁴²

In administering the Florida driver license and Florida identification card programs, DHSMV is authorized to issue licenses and identification cards to Florida residents who are not U.S. citizens who show a green card, a Consular Report of Birth Abroad, an unexpired employment authorization card issued by United States Department of Homeland Security (USDHS) or proof of nonimmigrant classification provided by USDHS such as a notice of hearing from an immigration court.⁴³ Many of the licenses and identification cards issued on such documentation are valid for a year or less.⁴⁴

Effects of Proposed Changes

PCB PIE 22-03 amends the list maintenance program statute to requires the Supervisor to incorporate the following:

- Required NCOA verification at least in each even-numbered year, which may begin in November preceding a presidential election year;
- Required Address Confirmation Requests sent to all voters' legal residence addresses at least once each odd-numbered year;
- At the Supervisor's discretion, Address Confirmation Requests may be sent to all registered voters who have not voted in the last 2 years and who did not, during such time, make a written request to update their registration records;
- Required identifying number solicitation sent via nonforwardable return-if-undeliverable mail to each voter whose registration record does not include a Florida driver license number, Florida identification card, or the last four digits of his or her social security number at least once each odd-numbered year.

All address confirmations requests must be initially addressed to the voter's address of legal residence. If the address confirmation request is returned undeliverable, any other notification sent to the voter must be addressed to the voter's mailing address on file, if any, as well as to any residence address on file. If the returned mail was undeliverable but without indication of an address change, the Supervisor must send an address confirmation request and final notice to the voter's mailing address on file.

A list maintenance program is required at least once each year, but may begin in November preceding a presidential election year, and must be completed no later than 90 days prior to the date of any federal election.

³⁹ S. 98.093(2)(g), F.S.

⁴⁰ Ss. 98.075(6), 98.093(3), F.S.

⁴¹ S. 97.057(1), F.S.

⁴² S. 97.057(13), F.S.

⁴³ Ss. 322.08(2)(c)5.-8., 322.051(1)(a)3.f.-h., F.S.

⁴⁴ Ss. 322.08(2)(c), 322.051(1)(a)3., F.S.

PCB PIE 22-03 expands the list of required information that must be contained in an address confirmation request. It requires instructions for updating voter registration information online; a voter registration application for the voter's use if making a registration application for the voter's use if making a registration change by mail; and notification that a person who willfully submits any false voter registration information commits a felony of the third degree.

The bill requires a new identifying number solicitation form that requests the voter provide his or her Florida driver license number or Florida identification card number, and the last four digits of his or her social security number.

PCB PIE 22-03 adds DHSMV to the list of sources the Department can use to identify registered voters who are deceased.

PCB PIE 22-03 also requires clerk of the circuit court to provide monthly reports to the Department on the terms of sentences and financial obligations of all persons listed in the clerk's records who reside within this state and have been convicted of a felony.

In addition, the DHSMV must provide a monthly report to the Department with a list of persons who presented evidence of non-United States citizenship upon being issued a new or renewed Florida driver license or Florida identification card. The list must contain the name; address; date of birth, social security number, if applicable; and Florida driver license number or Florida identification card number, as applicable, of each person.

Finally, the bill requires that the Department of State must submit to legislative leaders, by January 1, 2023, a plan to obtain identification numbers from all registered voters by the end of 2023. The plan is to include the details on funding required for implementation.

Vote by Mail Procedures

Present Situation

The Supervisor must enclose with each VBM ballot a secrecy envelope, into which the absent elector must enclose his or her marked ballot and a mailing envelope, into which the absent elector must then place the secrecy envelope, which must be addressed to the Supervisor. The mailing envelope also bears a certificate for the voter to sign under oath that they are a registered voter of the county in which they are voting and information regarding the penalty for fraud.⁴⁵ The ballot is sealed in the secrecy envelope which is placed in the mailing envelope, which is sealed after the certificate is completed by the voter.

With each VBM ballot sent to a voter, the Supervisor includes written detailed instructions for filling out and returning the ballot to ensure the ballot is counted.⁴⁶

Local election officials compare the signature of the elector on the voter's certificate (or on a VBM ballot cure affidavit completed after notice of a certificate deficiency) with the signature of the elector in the registration books or the precinct register to confirm that the elector is duly registered in the county and to determine the validity of that VBM ballot.⁴⁷

A VBM ballot may only be counted if the signature on the ballot or cure affidavit matches the elector's signature in the registration books or precinct register. However, if a cure affidavit contains a signature that does not match the elector's signature in the registration books or precinct register, the ballot may be counted if the elector has submitted a current and valid Tier 1 identification which confirms the identity of the elector.⁴⁸

⁴⁵ S. 101.64(1), F.S.

⁴⁶ S. 101.65, F.S.

⁴⁷ S. 101.68(1)(c), F.S.

⁴⁸ S. 101.68(2)(b), F.S.

(A Tier 1 identification is a current and valid identification that includes your name and photograph: Florida driver license; Florida identification card issued by DHSMV; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality.⁴⁹)

Effects of Proposed Changes

PCB PIE 22-03 requires the Supervisor to include three envelopes with vote-by-mail ballots: a mailing envelope, a secrecy envelope and a certificate envelope. Under the bill's provisions, the VBM voter's certificate will not be printed on the mailing envelope but on the certificate envelope. The voter's certificate is also revised to include a place to fill in the last four digits of a Florida Driver License or a Florida identification card. The certificate also reads that if no Florida Driver License or a Florida identification number can be provided, the voter must provide the last four digits of their social security number.

The bill changes the instructions for absent electors. The changes conform to the inclusion of the certificate envelope, requiring voters to place their marked ballot in the secrecy, the secrecy envelope into the certificate envelope, to seal the certificate envelope and to completely fill out the voter's certificate on the envelope. After that the sealed and executive certificate envelope is placed in the mailing envelope.

Two new instructions are added:

- Declaration that, in order for a voter's VBM ballot to be counted, the voter must enter into the space provided on the certificate envelope the last four digits of their Florida driver license or Florida identification card, and if neither is available, they may enter the last four digits of their social security number. The instruction states that a VBM ballot will be considered illegal and not be counted if the number provided does not match a number in the supervisor's records.
- Clear directions for use of the certificate envelope.

PCB PIE 22-03 amends the statute relating to canvassing of VBM ballots to conform to the inclusion of the mailing and secrecy envelopes and the partial driver license number, identification card number, or social security number. The Canvassing board must determine if the elector provided the last four digits of his or her Florida identification card number, or the last four digits of his or her social security number in the appropriate space on the certificate and that the number matches the Supervisor's records if the Supervisor has not already done so.

The bill amends the criteria for ballots to be counted to include the requirement for the elector to provide the last four digits of his or her Florida driver license, Florida identification card number, or social security number on the voter's certificate. The number must match the Supervisor's records, however, if a cure affidavit is filed, the supporting identification listed must also confirm the identity of the elector. If none of the above are provided, the elector can still have their vote counted if they have submitted a current and valid Tier 1 identification at the time of cure.

Mail Ballot Election Act *Present Situation*

An election may be conducted by mail ballot if; the election is a referendum where all or a portion of the electors of counties, cities, school districts covering more than one county or special districts are the only electors eligible to vote; the governing body responsible for calling the election and the Supervisor authorize the use of mail ballots; and the Secretary of State approves a written plan for the conduct of the election, which shall include a written timetable for the conduct of the election, submitted by the

Supervisor. In addition, an election may be conducted by mail for an annexation referendum which includes only qualified electors of one county.⁵⁰

The Supervisor must mail all official ballots with a secrecy envelop, a return mailing envelope and instructions sufficient to describe the voting process to each elector entitled to vote not sooner than the 20th day before the election and not later than the 10th day before the date of the election. They must be mailed by first class mail, and be addressed to each elector at the address appearing in the registration records and placed in an envelope clearly marked "Do Not Forward"

Upon receipt of the ballot the elector shall mark the ballot, place it in the secrecy envelope, sign the return mailing envelope supplied with the ballot, and comply with the instructions provided with the ballot. The elector shall mail, deliver, or have delivered the marked ballot so that it reaches the supervisor of elections no later than 7 p.m. on the day of the election. The ballot must be returned in the return mailing envelope. The mailing envelope shall contain the Voter's Certificate language for the voter to sign.⁵¹

If the ballot is destroyed, spoiled, lost, or not received by the elector, the elector may obtain a replacement ballot from the supervisor of elections as provided in this subsection. An elector seeking a replacement ballot shall sign a sworn statement that the ballot was destroyed, spoiled, lost, or not received and present such statement to the supervisor of elections prior to 7 p.m. on the day of the election. The supervisor of elections shall keep a record of each replacement ballot.⁵²

The supervisor of elections shall verify the signature of each elector on the return mailing envelope with the signature on the elector's registration records. Such verification may commence at any time prior to the canvass of votes. The supervisor of elections shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. If the supervisor of elections determines that an elector to whom a replacement ballot has been issued has voted more than once, the canvassing board shall determine which ballot, if any, is to be counted.⁵³

If an elector present for the canvass of votes believes that a ballot is illegal due to a defect apparent on the voter's certificate, the elector may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of such ballot, specifying the reason he or she believes the ballot to be illegal. No challenge based upon any defect on the voter's certificate shall be accepted after the ballot has been removed from the return mailing envelope.⁵⁴

All laws that are applicable to general elections are applicable to mail ballot elections to the extent applicable.⁵⁵

Special First Time Voter VBM Ballots *Present Situation*

First time voters who have not provided identification or certification of exemption from identification requirements must do so prior to voting. If they have not done so prior to delivery to such voter of a requested VBM ballot, the VBM ballot must include a special Voter's Certificate envelope certifying to an exemption or affirming they must provide identification for their vote to count.⁵⁶ The provisions therefor include special instructions to such voter⁵⁷, and special canvassing provisions.⁵⁸

Effects of Proposed Changes

⁵⁰ S. 101.6102, F.S.

⁵¹ S. 101.6103(1), F.S.

⁵² S. 101.6103(4), F.S.

⁵³ S. 101.6103(5), F.S.

⁵⁴ S. 101.6104, F.S.

⁵⁵ S. 101.6106, F.S.

⁵⁶ S. 101.6921, F.S.

⁵⁷ S. 101.6923, F.S.

⁵⁸ S. 101.6925, F.S.

PCB PIE 22-03 revises the mail ballot election act and provisions governing special VBM ballots of first-time voters to conform those provisions to the changes the bill makes in the general VBM requirements and procedures. Because these ballots already include a certificate envelope the process is only changed to include the identification number on the certificate.

Miscellaneous Issues

Private Funding Restrictions on Election Offices **Present Situation**

After millions of dollars were donated to local election offices by politically motivated non-profit organizations during the 2020 election cycle, the Legislature enacted a prohibition in 2021. As a result, no agency, state or local official responsible for conducting elections, including, but not limited to, a Supervisor of Elections (Supervisor), may solicit, accept, use, or dispose of any donation in the form of money, grants, property, personal services with the exception of the donation of space to be used for a polling room or an early voting site from an individual or a nongovernmental entity for the purpose of funding election-related expenses or voter education, voter outreach, or registration programs.⁵⁹

Effects of Proposed Changes

PCB PIE 22-03 adds litigation costs related to election administration to the list of money, grants or personal services that cannot be solicited, accepted, or used by any agency or state or local official responsible for conducting elections.

Initiatives **Present Situation**

Proposed amendments to the Florida Constitution may be made by a joint resolution of the Florida Legislature, a citizen's initiative, a proposal from the Constitutional Revision Commission, or a proposal from the Taxation and Budget Reform Commission. A proposed amendment requires at least 3/5 (60%) approval from the voters to pass.

A revision or amendment proposed by initiative, except for those limiting the power of government to raise revenue, must embrace one subject matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.⁶⁰

An initiative petition form circulated for signatures may not be bundled with or attached to any other petition. Each signature must be dated and be valid until the next February 1 occurring in an even-numbered year for the purpose of the amendment appearing on the ballot for the general election occurring in that same year, provided all other requirements of law are met.

The sponsor must submit signed and dated forms to the supervisor of elections for the county of residence listed by the person signing the form for verification of the number of valid signatures obtained. If a signature on a petition is from a registered voter in another county, the supervisor shall notify the petition sponsor of the misfiled petition. The supervisor must verify the signatures within 60 days after receipt of the petition forms along with a fee for the actual cost of signature verification incurred by the supervisor. However, for petition forms submitted less than 60 days before February 1 of an even-numbered year, the supervisor must verify the signatures within 30 days after receipt of the forms and fee. The supervisor must promptly record, in the manner prescribed by the Secretary of

⁵⁹ S. 97.0291, F.S.

⁶⁰ Art. XI, Sec. 3.

State, the date each form is received by the supervisor, and the date the signature on the form is verified as valid.⁶¹

The supervisor must retain the petition forms for at least 1 year following the election in which the issue appeared on the ballot or until the division notifies the supervisors of elections that the committee that circulated the petition is no longer seeking to obtain ballot position.⁶²

On the last day of each month, or on the last day of each week from December 1 of an odd-numbered year through February 1 of the following year, each Supervisor must post, on his or her website, the aggregate number of verified valid signatures and the distribution of such signatures by congressional district for each amendment proposed by initiative, along with the following information specific to the reporting period: the total number of signature forms received, the total number of signatures verified, the distribution of verified valid signatures by congressional district, and the total number of verified petition forms forwarded to the Secretary of State.

⁶¹ S. 100.371(11)(a), F.S.

⁶² *Id.*

Effects of Proposed Changes

PCB PIE 22-03 amends the statute so that the Supervisor must retain all initiative petition signature forms, separating the valid and invalid ones, for at least 1 year following the election. The Supervisors must provide a method of viewing and copying valid and invalid forms. The bill deletes authorization for the supervisor to dispose of the signature forms if the Division of Elections gives notice that the committee circulating the petition is no longer seeking to obtain the ballot position.

The bill also requires that the Supervisor to post the total number of signatures submitted, the total number of invalid signatures, and the total number of signatures processed along with the other information they are to post on their website.

Ranked-Choice Voting *Present Situation*

A ranked-choice voting system (RCV) is an electoral system in which voters rank candidates by preference on their ballots. If a candidate wins a majority of first-preference votes, he or she is declared the winner. If no candidate wins a majority of first-preference votes, the candidate with the fewest first-preference votes is eliminated. First-preference votes cast for the failed candidate are eliminated, lifting the second-preference choices indicated on those ballots. A new tally is conducted to determine whether any candidate has won a majority of the adjusted votes. The process is repeated until a candidate wins an outright majority.⁶³

The City of Sarasota has passed an amendment allowing for RCV, called Instant Runoff Voting, allowing voters to rank the candidates in order of preferences. This amendment to their charter was passed in 2007, but the state of Florida has not authorized voting systems allowing for this process. Consequently, the Sarasota RCV proposal has not been implemented.⁶⁴

Effects of Proposed Changes

This bill prohibits RCV in Florida and invalidates all local ordinances authorizing it.

Single Member County Commission Districts *Present Situation*

The Florida Constitution provides, except as otherwise provided by a county charter for 5 or 7 county commissioners serving staggered terms of 4 years. Under the constitution, commissioners reside in separate districts and are elected as provided by law. After each decennial census, the county commission divides the county into districts of contiguous territory as nearly equal in population as practicable.⁶⁵

Florida law provides for 5 districts in each county with commissioners elected by the qualified electors of the county.⁶⁶ Accordingly, 33 counties currently elect all commissioners at-large. An alternate procedure for election of commissioners provides for single-member representation. Under that law, the county commission, or an initiative petition signed by 10% of voters, may submit a proposition to voters providing for either five single-member districts with commissioners elected by qualified electors of each district or five single-member districts plus two at-large members elected by all county voters. That law also provides for the initiation of such single-member districts through an initial staggering of terms.⁶⁷

Finally, charter counties authorized under the Florida Constitution make various provisions for both single-member districts and at-large commissioners some having residence districts. For example: Duval County currently has 19 commissioners including 14 from single-member districts and 5

⁶³ [https://ballotpedia.org/Ranked-choice_voting_\(RCV\)](https://ballotpedia.org/Ranked-choice_voting_(RCV)) (last accessed Jan. 20, 2022).

⁶⁴ Art. IX, Sec. 5(b) [Pending Regulation], Sarasota City. Charter

⁶⁵ S. 1(e), Art. VIII, Fl. Const.

⁶⁶ S. 124.01, F.S.

⁶⁷ S. 124.011, F.S.

representing separate districts elected at-large; Broward has 9 commissioners elected from single-member districts.

Effect of Proposed Changes

PCB PIE 22-03 revises the single-member representation provision and a commissioner election law to provide, after each decennial redistricting, for each county commissioner elected in single-member districts to be elected with terms re-staggered. The bill makes exceptions for Miami-Dade County, for charter counties with redistricting, and for every county in which voters have not voted to impose term limits, regardless of any judicial nullification of such vote.

B. SECTION DIRECTORY:

Section 1: Creates section 97.022, establishing the Office of Election Crimes and Security, the duties and purpose of the office.

Section 2: Amends 97.0291 to prohibit donations to election offices funding the cost of any litigation related to election administration.

Section 3: Amends 97.057 to conform the statute to other changes made in the bill.

Section 4: Amends 97.0575 to increase the aggregate fine third-party voter registration organizations can be assessed in a calendar year.

Section 5: Amends 98.065 revising the requirements of Supervisor of Elections relating to list maintenance programs.

Section 6: Amends 98.0655 to revise required list maintenance forms.

Section 7: Amends 98.075 to include DHSMV as a source of information identifying deceased voters.

Section 8: Amends 98.093 require court clerks to provide the Department with information regarding felon penalties and DHSMV to provide information regarding non-citizens with driver licenses.

Section 9: Amends 100.041 to conforms to changes made in this bill relating to county commissioner elections following redistricting.

Section 10: Amends 100.371 to specify and update requirements of Supervisors regarding initiative petition signature forms.

Section 11: Creates section 101.019 prohibiting ranked-choice voting in Florida.

Section 12: Amends 101.5614 to impose criminal penalties on persons with access to certain information during election canvassing who release votes cast or other election results early.

Section 13: Amends 101.6103, effective January 1, 2024, to require the Supervisor to include a certificate envelope with mail ballots and add requirements for inclusion of identification numbers of voters and proper usage of the certificate envelope.

Section 14: Amends 101.6104, effective January 1, 2024, to conform language to inclusion of the certificate envelope with mail ballots.

Section 15: Amends 101.64, effective January 1, 2024, to conform the delivery of VBM ballot to include the certificate envelope, and revising the Voter's Certificate to include identification numbers.

Section 16: Amends 101.65, effective January 1, 2024, revising instructions provided to absent electors to conform to changes made by the act.

Section 17: Amends 101.68, effective January 1, 2024, to conform canvassing requirements to the inclusion voter identification numbers and requiring the Canvassing board or Supervisor to verify the information.

Section 18: Amends 101.6921, effective January 1, 2024, to conform language to the inclusion of the certificate envelope with VBM ballots for certain first-time voters.

Section 19: Amends 101.6923, effective January 1, 2024, to conform instructions to first-time VBM voters to the inclusion of the certificate envelope.

Section 20: Amends 101.6925, effective January 1, 2024, to conform language relating to canvassing and the certificate envelope for first-time VBM voters.

Section 21: Amends 102.091 to allow the appointment of special officers employed by FDLE and detailing their responsibilities.

Section 22: Amends 102.101 to conform restriction on law enforcement officers in polling places to include special officers appointed under 102.091.

Section 23: Amends 104.0616 to classify illegal possession of VBM ballots as a third-degree felony.

Section 24: Amends 104.185 to classify fraudulent signing of another person's name or a fictitious name to any petition to secure ballot position to be a third-degree felony.

Section 25: Amends 104.186 to classify illegal compensation of petition circulators as a third-degree felony.

Section 26: Amends 124.011 to require new elections and stagger terms in certain single-member district county commission districts following decennial redistricting.

Section 27: Amends 921.0022, Criminal Punishment Code, to specify the lowest punishment level for the new felony possession of VBM ballots.

Section 28: Requires the Department to submit a report to the legislative leaders detailing a plan to obtain Florida voter's personal identification numbers.

Section 29: Provides an effective date upon becoming law, except as specifically provided above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The only revenues impacted by the bill are fines that may be collected from violations with increased penalties. Such revenues would likely be insignificant.

2. Expenditures:

The bill would require some expenditure by the Department of State and FDLE to support the new election security investigative authority. FDLE estimates recurring annual costs of approximately 1 million dollars for 10 special officers and \$500,000 in nonrecurring costs. The Department estimates a cost of approximately 1.1 million dollars for additional voter registration and list maintenance workload. 1 million recurring and 67 thousand nonrecurring. The Department estimates approximately 1.1 million dollars to staff the new Office of Elections Crimes and Security. 1 million recurring, and 67 thousand nonrecurring.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local revenues.

2. Expenditures:

The bill will require some additional expenditures by Supervisors, the bulk of which will begin in 2023 with list maintenance responsibilities and 2024 with new VBM procedures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to impact the private sector economy.

D. FISCAL COMMENTS:

The bill allows the ten appointed special officers to maintain other responsibilities so it is very likely that FDLE will be able to fulfill its new responsibilities with recurring expenditures much lower than the above-estimate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The election law amendments contained in the PCB are exempt from the requirements of Section 18, Art. VII, Fl. Const. which restricts the Legislature's authority to negatively impact local government spending and revenues.

2. Other:

The county commissioner redistricting provisions of the bill may cut some commissioner terms in half. The constitution provides both for four-year county commission terms and for commissioners' election as provided by law.⁶⁸ Existing provisions staggering initial terms of commissioners in single-member representation districts⁶⁹ and authorizing recall of commissioners in charter counties⁷⁰ do not appear to have been disapproved on judicial review.

B. RULE-MAKING AUTHORITY:

The Department of State has rulemaking authority necessary to implement all provisions of the Florida Election Code. The changes to s. 98.0655, F.S., will require additional rulemaking revising the forms specified therein.

⁶⁸ S. 1(e), Art. VIII, Fl. Const.

⁶⁹ S. 124.011, F.S.

⁷⁰ S. 100.361, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES